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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 98-237
With Regard to the 3650-3700 MHz	)	RM-9411
Government Transfer Band	)	
	)	
The 4.9 GHz Band Transferred from	)	WT Docket No. 00-32
Federal Government Use	)	

COMMENTS OF ADVANCED TELCOM GROUP REGARDING SECOND NOTICE OF PROPOSED RULEMAKING

Advanced TelCom, Inc., dba Advanced TelCom Group ("ATG"), is an integrated telecommunications provider, which was founded in 1998. ATG utilizes its own digital network to provide service to medium sized communities in several states. ATG provides local telephone, domestic and international long distance service, Internet and data services, including DSL technology, and other enhanced voice services. ATG also utilizes fixed microwave technologies as part of its digital network to deliver data and voice services to customers, where that is cost-effective. Therefore, ATG has a real and direct interest in the subject matter of this proceeding.[1]

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, ATG hereby submits its comments in response to the Commission's *Second Notice of Proposed Rulemaking* ("*NPRM*")[2] in these proceedings.

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[1] ATG filed opening and reply comments and provided the Commission with an ex parte presentation in the 4.9 GHz proceeding. *The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No.00-32. (rel. Feb.29, 2000).

[2] *In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band,* ET Docket No. 98-237, RM-9411, The 4.9 GHz Band Transferred

I. The pairing of the 4.9 GHz band with the 3650-3700 MHz frequencies is appropriate.

The Commission seeks comment on whether the pairing of the 4.9 GHz band with the 3650-3700 MHz frequencies is "necessary or appropriate."[3] While it is not necessary to pair these two bands, ATG believes that it is certainly appropriate. Both bands include 50 megahertz of spectrum, which could be used to provide a wide array of services to the public. Some of these new fixed and mobile services could link residences, businesses and other locations to a rapidly developing array of networks. Thus, ATG believes that pairing the 4.9 GHz and 3650-3700 MHz frequencies is appropriate and is in the public interest. The technology which ATG projects that it would employ for fixed wireless service in this spectrum requires a minimum of 40 MHz of spectrum, and with appropriate guardbands, could operate on a single 50 MHz allocation of spectrum. However, the pairing of two 50 MHz, spectrally separated channels, would permit better spectral utilization via frequency reuse. In addition, feature-rich, high speed technologies of the future may well require the additional spectrum, and will certainly be enhanced by its availability.

II. The Commission should use a geographic area that will ensure that service will be provided to all citizens.

The Commission seeks comment on the appropriate geographic area to use for licensing the 3650-3700 MHz band.[4] ATG urges the Commission to adopt Metropolitan Statistical Areas ("MSAs") and Rural Statistical Areas ("RSAs") as the geographic area for licensing this band.

In response to the Notice of Proposed Rulemaking in the 4.9 GHz band[5], ATG and

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from Federal Government Use, WT Docket No. 00-32 (rel. Oct. 24, 2000)[hereinafter cited as "NPRM"].

[3] *See NPRM*, at ¶ 44.

[4] *See NPRM*, at ¶ 67.

[5] *The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32 (rel. Feb. 29, 2000).

several other parties filed comments urging the issuance of licenses based on MSAs and RSAs. The United States Small Business Administration[6], The Rural Telecommunications Group[7] and ATG all agreed that MSAs and RSAs offer important benefits over licensing based on larger geographic areas.

In the 4.9 GHz proceeding, ATG demonstrated that licensing based on MSAs and RSAs would afford smaller providers the opportunity to obtain wireless licenses and to provide services to niche markets. This opportunity would not be available if the Commission were to use larger areas such as Economic Areas ("EAs") because EAs contain very large metropolitan cities, which are cost prohibitive for smaller operators.

For example, the EA that contains San Francisco and San Jose, California also contains less densely populated areas, including numerous small cities, towns and rural areas, which are geographically separate from those two cities. Therefore, if the Commission would adopt EAs, an operator desiring to serve the smaller California communities would also have to bid on the major metropolitan area, which would drive up the price, making it impossible for smaller carriers to compete for these licenses. Another example of an EA containing major metropolitan cities and smaller areas is Portland, Salem, Eugene and Corvallis, Oregon. Once again, an operator desiring to serve the less densely populated areas would not be able to obtain licenses because they would be forced to pay the higher price for the major metropolitan area in order to obtain a license for the smaller cities.

However, if MSAs and RSAs are used rather than an EA, smaller companies would be able to obtain licenses and to provide services to less densely populated areas that do not include major metropolitan areas. ATG believes that the use of MSAs and RSAs would allow more entities to provide more services to the public than using larger geographic areas such as EAs.

The comments filed by ATG in the 4.9 GHz case have been echoed by the majority of the parties who filed comments in response to the *Notice and Order* in this proceeding. The NPRM

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[6] Initial Comments of U.S. Small Business Administration, pp.2-4.

[7] Initial Comments of The Rural Telecommunications Group, pp. 5-10.

cites Rural Carriers, Innowave, NTCA, RTG, TDS, SR Telecom, Nortel, GTE, Western Wireless and OPASTCO as all supporting licensing based on small geographic areas such as Basic Trading Areas ("BTAs"), MSAs or RSAs.[8]

ATG respectfully submits that the use of larger geographic areas such as EAs, Major Economic Areas ("MEAs") or Economic Area Groupings ("EAGs") will not ensure that services are provided to less densely populated areas. Because these larger geographic areas include major cities as well as less densely populated areas, ATG believes that the winning bidders are likely to provide services only to the major urban areas and are less likely to provide service to the less densely populated areas. Even the imposition of a build out restriction which would require that service be provided to a proportion of subscribers in an area will not ensure that wireless services are provided to less densely populated areas, especially where an EA includes one or more major cities.

If the Commission wishes to promote the spread of fixed wireless technologies to smaller cities, towns and rural areas, ATG respectfully submits that the appropriate geographic area must be MSAs and RSAs.

[8] *See NPRM*, at ¶64, n. 184.

III. The Commission should not issue licenses on a regional or national basis.

The Commission also seeks comment on the possibility of licensing part of the 3650-3700 MHz band and the 4.9 GHz band on a regional or national basis and the remaining part of the bands on a smaller scale.[9] The NPRM cites the Commission's goals of permitting dissemination of licenses among a wide variety of applicants, ensuring service to rural areas, and promoting investment in and rapid deployment of new technologies and services.[10] ATG respectfully submits that none of these goals will be furthered if the Commission were to issue licenses on a regional or national basis.

First, smaller companies simply can not afford regional or national licenses. Therefore, such licenses would not be disseminated among a wide variety of applicants, but rather only among a few large companies, which will have little incentive to provide services to less populous areas. Second, experience has shown that only companies with a financial incentive will service the niche market of rural areas. Despite the FCC's recent *Policy Statement*,[11] encouraging licensees to make all or part of their frequencies and or service areas available to other entities, it is apparent from the lack of fixed wireless services in smaller cities and towns and rural areas that some entities are warehousing spectrum to the detriment of these areas. Therefore, these areas are not getting the same level of service as more densely populated areas. Finally, if the Commission were to issue licenses on a regional or national basis, smaller innovative companies would be left out in the cold. The Commission should reward innovation and award licenses to those companies who are on the cutting edge of technological advances. Nationwide or regional licenses would not be affordable for smaller innovative companies and,

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[9] *Id.*

[10] See NPRM, at ¶ 67.

[11] In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, FCC 00-401 (rel. Dec. 1, 2000).

as a result, such companies would not be able to obtain the capital required to test and deploy the new services the Commission seeks. For all of the foregoing reasons, the Commission should not issue licenses on a regional or national basis.

IV. The Commission should license the spectrum as a pair of fifty megahertz blocks . ATG believes that the purposes of the Commission in this proceeding are best served by licensing the entire spectrum as a pair of fifty megahertz blocks, subject to no limitation being placed on the ability of licensees to partition service areas and disaggregate spectrum (see below). This will provide maximum flexibility to the licensees in their choice of technologies. In addition, this will give licensees room to grow their businesses as new technologies appear.

V. No limits should be placed on the ability of licensees to partition service areas and disaggregate spectrum.

ATG believes that the FCC should not place any limitation on partitioning and disaggregation of this spectrum. This will permit licensees the flexibility to enter into arrangements with a variety of potential service providers, and will encourage the spread of these promising technologies to smaller markets and submarkets, as licensees work with other carriers, which may have an interest in serving portions of the licensed service area.

VII. Conclusion

In sum, ATG believes that the pairing of the 4.9 GHz band with the 3650-3700 MHz frequencies will be in the public interest by bringing additional services to the public. The paired frequencies should be licensed using MSAs and RSAs to allow new entrepreneurs to acquire spectrum and compete with other wireless services already being provided over other frequencies.

Respectfully submitted,

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